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THE HON. MARSHA J. PECHMAN

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12 UNITED STATES DISTRICT COURT  
13 WESTERN DISTRICT OF WASHINGTON, SEATTLE

14 OMNI INNOVATIONS, LLC, a  
15 Washington Limited Liability  
16 company;

17 Plaintiff,  
v.

18 eFinancial, Inc. and JOHN DOES, I-  
X,

19 Defendants,

20 NO. CV06-01118

21 **DECLARATION OF JAMES S.  
GORDON, JR. IN REPLY RE  
PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
FOR INJUNCTIVE RELIEF**

22 1. I, James S. Gordon, Jr., am the Plaintiff in the above captioned lawsuit. I am over the age  
23 of 18, of sound mind, and am otherwise competent to testify.  
24 2. Regarding Defendants' allegation that some of the domains I identified as having  
25 received their commercial email are not owned by, or registered to me, that is true.

26 DECLARATION OF JAMES S. GORDON, JR. IN  
27 SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL  
28 SUMMARY JUDGMENT FOR INJUNCTIVE RELIEF

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33 Seattle, WA 98101  
34 Phone/Fax: 888-839-3299

1 However, all of the identified domains are hosted by Omni on its server as part of its  
2 operation as an "interactive computer service" ("IAS"). These emails do, in fact, come to  
3 me (received by Omni's server), and are then passed along to the actual recipient whose  
4 email account Omni hosts.

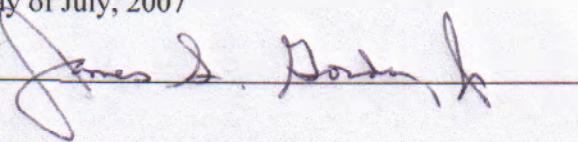
5 3. Attached hereto as **Exhibit "A"** is a copy of the most recent spam sent June 5, 2007  
6 received from or on behalf of Defendants. I clicked on the hyperlink in the email and my  
7 browser opened to the eFinancial website, (See a copy of eFinancial's website attached  
8 hereto as **Exhibit "B"**) On that basis I believe that Defendants or their agents are  
9 responsible for sending the email.

10 4. By way of further explanation as to why Defendants are wrong when they claim that we  
11 cannot "trace" their spam to them, Defendant is using a form of co-op advertising. The  
12 emails contain hyperlinks to websites such that when the email is viewed the html-  
13 enabled browser automatically imports graphics from a remote server. In that manner,  
14 whoever controls the server can continuously rotate and display whatever ad copy it  
15 desires by changing the images associated with those links. The fact that their web page  
16 is displayed when one clicks on the graphics in the spam email demonstrates conclusively  
17 that, at a minimum, they are acting in consort the sender of the email.

18 I declare under penalty of perjury under the laws of the United States that the foregoing is  
19 true and correct.

20 17 EXECUTED this 10th day of July, 2007

21 18 /s/ James S. Gordon, Jr.  
22 19 James S. Gordon, Jr.



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25 SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL  
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2 **Certificate of Service**  
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4 I, hereby, certify that on July 11th, 2007, I filed this affidavit with this Court via approved  
5 electronic filing, and served the following:  
6

7 Attorneys for Defendants: Matthew Wojick,  
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9  
10 /s/ Robert J. Siegel  
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12 Robert J. Siegel  
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